**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929**

**WP(C).No. 20072 of 2006(M)**
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**PETITIONERS:**
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**1. MANGANDODI POMMANICHI PATHUTTY UMMA,**
**W/O. ASSAINAR HAJI, KOLARI AMSOM,**
**PORORA DESOM, P.O. PORORA, DT. KANNUR.**

**2. -DO- ABOOBACKER, S/O. ASSAINAR HAJI,**
**-DO- -DO-**

**3. -DO- ABDUL KHADER, -DO- -DO- -DO-**

**4. -DO- ASHRAF, -DO- -DO- -DO-**

**5. -DO- KUNHAMINA UMMA, D/O. POCKER,**
**PUTHIYAPURAYIL, KOLARI AMSOM,**
**PORORA DESOM, P.O.PORORA, KANNUR DISTRICT.**

**BY ADV. SRI.K.V.SOHAN**
**SMT.VIDHYA. A.C**
**SMT.SREEJA SOHAN.K.**

**RESPONDENTS:**
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**1. MANGANDODI POMMANICHI AYISSUMMA,**
**W/O. ABOOBACKER, KOLARI AMSOM,**
**PORORA DESOM, P.O.PORORA, DT. KANNUR.**

**2. -DO- MARIYAM, D/O. ASSAINAR HAJI,**
**-DO- -DO-**

**3. -DO- NABEESA, -DO- -DO-**

**4. -DO- ABDULLA, S/O. ASSAINAR HAJI,**
**-DO- -DO-**

**BY ADV. SRI.GRASHIOUS KURIAKOSE -- R1**
**SMT.SANJANA R.NAIR -- R4**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 20072/2006 M**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE PLAINT IN OS NO. 89/00 OF MUNSIFF COURT, KUTHUPARAMBA.**

**EXT.P2. COPY OF THE WRITTEN STATEMENT OF DEFENDANTS 1 TO 3,5, 7 AND 8 IN -DO-**

**EXT.P3. COPY OF THE REGISTERED GIFT DEED DT. 24/3/72 BY ASSAINAR HAJI TO P2.**

**EXT.P4. COPY OF THE REGD. GIFT DEED DT. 28/8/74 EXECUTED BY P1 TO THE R1.**

**EXT.P5. COPY OF THE REGD. GIFT DEED NO. 823/81 EXECUTED BY R1 IN FAVOUR OF P3 AND R3 AND R4.**

**EXT.P6. COPY OF THE REGD. GIFT DEED NO. 824/81 EXECUTED BY R1 TO P2 AND P4 AND R2.**

**EXT.P7. COPY OF THE PROCEEDINGS OF THE TALUK LAND BOARD THALASSERY REF. NO. TLB 1210/73 (TLY) DT. 16/6/75.**

**EXT.P8. COPY OF THE AFFIDAVIT FILED BY HUSBAND OF R1 IN SUPPORT OF THE APPLICATION FOR APPOINTING ADVOCATE COMMISSIONER IN OS NO. 89/00 OF MUNSIFF COURT, KUTHUPARAMBA.**

**EXT.P9. COPY OF THE COUNTER FILED BY 2ND DEFENDANT IN THE APPLAICATION FOR APPOINTING ADVOCATE COMMISSIONER IN OS NO. 89/00 OF MUNSIFF COURT, KUTHUPARAMBA.**

**EXT.P10. COPY OF THE REPORT BY ADVOCATE COMMISSIONER IN OS NO. 89/00 OF -DO-**

**EXT.P11. COPY OF THE PLAN -DO-**

**EXT.P12. COPY OF THE AFFIDAVIT FILED BY P2 IN SUPPORT OF IA NO. 1615/05 IN OS NO. 89/00 OF MUNSIFF COURT, KUTHUPARAMBA.**

**EXT.P13. COPY OF THE ARGUMENTS NOTES BY THE ADVOCATE FOR PETITIONERS IN -DO-**

**EXT.P14. COPY OF THE ORDER DT. 3/07/06 OF THE LEARNED MUNSIFF COURT, KUTHUPARAMBA IN IA NO. 1615/00 IN OS NO. 89/00.**

**RESPONDENT'S EXHIBITS** **NIL.**

*True copy*

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**M.N. KRISHNAN, J.**

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**W.P.C. NO. 20072 OF 2006**

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**Dated this the 26th day of September, 2007.**

**J U D G M E N T**

This writ petition is filed challenging the order of the learned Munsiff, Kuthuparamba in I.A.1615/05 in O.S.89/00. The said application is one for remission of the Commissioner's plan and report. The suit is one for partition of the properties described in the plaint schedule and item No.1 of the plaint schedule property is described as 5 acres of land comprised in Re.Sy.No.29/1 of Kolari Amsom. The title holder of the property was one Assainar Haji. He had obtained the property by virtue of a registered Marupatt dated 6/5/69. It is also an admitted case by the plaintiff that during the life time Assainar Haji had executed a gift of the property of 5 acres and the remaining extent is described as item No.1 in the plaint schedule property. Both sides agreed that there has been a ceiling case initiated against Assainar

Haji. It is also admitted that the 2nd defendant had been given property by virtue of Ext.P3 document. It is submitted that the total extent covered by Ext.P3 comes to 6.29 acres. So, in order to have a proper consideration of the matter one has to find out what is the extent of property available under the Marupatt of 1969 and then demarcate the property given under the gift in favour of D2 and D3, then also find out whether any land comprised in Re.Sy.No.29/1 has been surrendered in favour of the Government and if anything remains that shall be the extent available with the legal representatives of the deceased Assainar Haji for division.

So, in order to have a proper determination of the matter I direct the Court below to remit the Commissioner's plan and report to locate the properties as mentioned by me in the previous paragraph and then dispose of the matter in accordance with law after permitting the parties to file objections to the Commissioner's plan and report. If the parties are desirous of filing any work memo before the Commissioner that also can be permitted, to have a

complete consideration of the materials that they want the Commissioner to note.

The writ petition is disposed of accordingly.

**M.N. KRISHNAN, JUDGE.**

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